Supreme Court, U.S.
FILED
SEP 25 1995
CLERK

No. 95-1

IN THE UNITED STATES SUPREME COURT
OCTOBER TERM, 1995

MIGUEL ANGEL MARTINEZ,
Petitioner,

v.

THE STATE OF TEXAS,
Respondent.

On Petition for Writ of Certiorari
To the Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

DAN MORALES
Attorney General of Texas

*MARGARET PORTMAN GRIFFEY
Assistant Attorney General
Chief, Capital Litigation Division

JORGE VEGA
First Assistant Attorney General

LAURA BAYOUTH POPPS
Assistant Attorney General

DREW T. DURHAM
Deputy Attorney General
for Criminal Justice

P. O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 936-1600

ATTORNEYS FOR RESPONDENT

* Counsel of Record

QUESTIONS PRESENTED

1. Whether a petitioner is constitutionally entitled to an additional anti-parties instruction at the punishment phase of his capital murder trial, even though the jury was instructed to consider only the defendant's conduct in answering the special issues, the wording of the special issues themselves foreclose application of a parties analysis, and the jury has already made the requisite finding of intentional murder during the guilt-innocence phase of trial.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	iv
OPINIONS BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	2
A. Course of Proceedings and Disposition Below	2
B. Statement of Facts	3
1. Guilt-Innocence Phase	3
2. Punishment Phase	7
REASONS FOR DENYING THE WRIT	9
I. THE QUESTIONS PRESENTED FOR REVIEW ARE UNWORTHY OF THIS COURT'S ATTENTION.	9

TABLE OF CONTENTS, continued

Page

II. THE JURY'S VERDICTS AT BOTH THE GUILT-INNOCENCE AND PUNISHMENT PHASES OF TRIAL NECESSARILY INCLUDED A FINDING THAT MARTINEZ INTENDED THE MURDER OF HIS VICTIMS. THE TRIAL COURT ADEQUATELY INSTRUCTED THE JURY TO CONSIDER ONLY MARTINEZ' CONDUCT DURING ITS PUNISHMENT PHASE DELIBERATION. 10

CONCLUSION 16

TABLE OF AUTHORITIES

Cases	Page
Enmund v. Florida, 458 U.S. 782 (1982)	10,11
Jacobs v. Scott, 31 F.3d 1319 (5th Cir. 1994), *cert. denied*, 115 Sct. 711 (1995)	15
McCoy v. Lynaugh, 874 F.2d 954 (5th Cir. 1989)	15
Santana v. Collins, No. 92-2319, slip op. at 5 (5th Cir. --November 23, 1992)	15
Skillern v. Estelle, 720 F.2d 839 (5th Cir. 1983), *cert. denied*, 469 U.S. 873 (1984)	15
Stewart v. Collins, 978 F.2d 199 (5th Cir. 1992), *cert. denied*, 113 S.Ct. 1951 (1993)	15
Constitutions, Statutes and Rules	
U. S. Const., amend. VIII	2
28 U.S.C. § 1257(a)	2
TEX. CODE CRIM. PROC. ANN. art. 37.071 (Vernon Supp. 1990)	2
Sup. Ct. R. 10.1	9

No. 95-1

IN THE
UNITED STATES SUPREME COURT
OCTOBER TERM, 1995

MIGUEL ANGEL MARTINEZ,
Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

On Petition for Writ of Certiorari
To the Texas Court of Criminal Appeals

RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE JUSTICES OF THE SUPREME COURT:

NOW COMES the State of Texas, Respondent[1] herein, by and through the Attorney General of Texas, and files this Brief in Opposition.

---

[1] For clarity, Respondent will be referred to as "the state" and petitioner Miguel Angel Martinez as "Martinez."

OPINIONS BELOW

The Texas Court of Criminal Appeals affirmed Martinez' conviction and sentence. *Martinez v. State*, No. 71, 481 (Tex. Crim. App. December 14, 1994).[2] On April 5, 1995, the Court of Criminal Appeals denied Martinez' motion for rehearing.

JURISDICTION

Martinez seeks to invoke this Court's jurisdiction under the provisions of 28 U.S.C. § 1257.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Martinez bases his claim upon the Eighth Amendment to the United States Constitution. In addition, he relies on Article 37.071 of the Texas Code of Criminal Procedure.

STATEMENT OF THE CASE

A. Course of Proceedings and Disposition Below

Martinez was indicted on May 29, 1991, in the 341st Judicial District Court of Webb County, Texas, for the offense of capital murder.[3] Martinez was tried before a jury upon a plea of not guilty, and on April 6, 1992, the

---

2 The opinion was published in part at 899 S.W.2d 655 (Tex. Crim. App. 1994).

3 Martinez was charged with capital murder on alternative theories: either committing more than one murder during the same criminal transaction, or committing murder while in the course of committing or attempting to commit burglary of a habitation. Transcript of state trial proceedings, hereinafter "Tr.", at 22-23.

jury found him guilty of the capital offense. On April 8, 1992, following a separate punishment hearing, the jury answered affirmatively the two special sentencing issues submitted pursuant to TEX. CODE CRIM. PROC. ANN. art. 37.071(b) (Vernon 1990).[4] In accordance with state law, the trial court assessed Martinez' punishment at death.

Martinez' conviction and sentence were automatically appealed to the Texas Court of Criminal Appeals, which affirmed on December 14, 1994, and denied rehearing on April 5, 1995. *Martinez v. State,* No. 71, 481 (Tex. Crim. App.--December 14, 1994). These proceedings followed.

B. Statement of Facts

1. Guilt-Innocence

The Court of Criminal Appeals summarized the evidence at the guilt-innocence phase of trial as follows:

---

[4] The special issues submitted to the jury at trial read as follows:

> SPECIAL ISSUE I
>
> Whether the conduct of the defendant that caused the death of the deceased was committed deliberately and with the reasonable expectation that the death of RUBEN MARTINEZ, JR., JAMES D. SMILEY and DANIEL DUENEZ would result?
>
> SPECIAL ISSUE II
>
> Whether there is a probability that the defendant would commit criminal acts of violence that would constitute a continuing threat to society?

Tr. 483.

Viewed in the light most favorable to the verdict, the testimony at appellant's trial established the following: Around January of 1989, appellant worked as an employee at an Arby's restaurant managed and partially owned by Smiley. On numerous occasions during his employment, appellant borrowed Smiley's house keys to retrieve items from the residence where the murders were carried out, and even lived at the house for a short period of time after being evicted from the home of his parents. At some time prior to January 17, 1991, appellant was fired from his job.

On January 17, 1991, appellant and Manuel Flores spent the evening hours drinking at Flores' residence in Laredo. Venegas arrived at the residence around midnight. Soon after he appeared, Venegas stated that he wished to 'trash' somebody's house. Appellant responded that he knew a house which they could trash, and then asked Flores whether he could borrow a gun for the evening. Flores denied the request, explaining to appellant that all of his guns were locked in a safe. All three individuals then proceeded into Flores' bedroom. Appellant found a large dagger and a pocket knife in the bedroom, and he found an ax in a nearby

storage room. He asked to borrow all three, and Flores consented.

Armed with the two knives and the ax, appellant and Venegas had Flores give them a ride to the Del Mar section of Laredo. Appellant directed Flores to Smiley's residence. Shortly thereafter, appellant and Venegas entered the house. Duenez, Smiley, and R. Martinez were subsequently killed as they slept in three different rooms of the residence.

Three days after the murders, appellant admitted to Flores that he had stabbed R. Martinez--the first victim killed. While making this admission, appellant appeared 'excited,' '[l]ike . . . he had won a million dollars.'

Besides testimony, the State's evidence included appellant's written confession, which he gave to the Laredo Police Department four days after the killings:

> Me and Miguel A. Venegas went to Smileys house on Thursday night. Venegas had an ax & a black knife. I carried the folding knife. We went to destroy the house around 1 or 2 a.m. I thought the house was empty. Venegas opened the door with spare key.

Venegas went in first & said a guy was on the couch. I went in to see. I told him I didn't know who he was. We went back out and I told him let's split. He said no because Satan wanted their souls. He went back in and hit him once on the head with the ax. The guy made a funny noise, and got Miguel's black shirt & covered his mouth. Venegas first poked him with a knife then I. He gave me a pillow to put on his head & then said he was gone. Venegas crossed into the other room and stabbed the kid. (I) went to the hall & saw Venegas getting air. I told him I was freaking out he said 'I'll take care of it give me the ax. I gave it to him & I walked out of the house. I was walking back in and heard a hit I walked to hall & he came out of Smileys room. He said the cross was upside down. he said he would

> get the keys & we would leave. I got the phone & he put T.V. in car, inside the garage We left the car at Dr's Hosp., and walked to his house to spend the night. The next day around 3 p.m. he took me to a friends house. then he picked up Mike Otero & Ray Rodriguez, & went to mall & saw Raymond Gutierrez there. Ax was in trunk. He dropped me home. he left with Raymond to sell T.V. & car. (Sic et passim.)
>
> Miguel A. Martinez
> /s/

Martinez v. State, No. 71, 481, slip op. at 2-3.

2. Punishment

The Court of Criminal Appeals summarized the punishment phase evidence as follows:

> During the punishment phase, the State presented testimony from Dr. James Grigson, a psychiatrist who had previously examined over 13,000 criminal defendants, and who had testified as a medical expert in over 2,000 criminal cases. In addition, Dr.

Grigson examined over 400 defendants charged with capital murder, and in 144 of those cases had been called as a testifying expert. After the State presented him with a hypothetical scenario based upon appellant's conduct on the night of the murders, Dr. Grigson expressed his opinion that the appellant would constitute a continuing threat to society.

Appellant, in turn, called thirteen witnesses to the stand during the punishment phase of the trial. Dr. Timothy Brown, a clinical psychologist and the only health professional called by appellant, stated that he had previously testified in thirty criminal cases, three or four of which had been murder cases. In none of those cases, however, had the defendant been charged with capital murder. Dr. Brown expressed his opinion that 'the probabilities for [appellant] continuing to be a danger to society is [sic] low.' He further testified that he was not familiar with the trial testimony concerning the murders themselves, and therefore had not used such information in forming his opinion.

Appellant also called to the stand two ministers and three members of the church he attended in Laredo, his high school counselor and two of his high school instructors. Each of these witnesses described appellant as non-

> violent, respectful and obedient. In addition, three individuals employed as educators for Webb County inmates testified that, during his incarceration pending trial, appellant scored well on numerous academic examinations and exhibited no violent behavior.
>
> Finally, appellant's mother took the stand and testified that appellant had always been an 'obedient son' and had done well in school. In the year preceding the murders, however, as her son became friendly with Venegas and Flores, his grades and school attendance slipped and he became emotionally distant from his mother.

Id. at 9-10.

REASONS FOR DENYING THE WRIT

I.

THE QUESTIONS PRESENTED FOR REVIEW ARE UNWORTHY OF THIS COURT'S ATTENTION.

Rule 10.1 of the Rules of the Supreme Court provides that review on writ of certiorari is not a matter of right, but of judicial discretion, and will be granted only when there are special and important reasons therefor. Martinez advances no special or important reason in this case, and none exists. Further, the issues in this case involve only the application of established constitutional principles to the facts. Thus, the petition presents no

important question of law to justify this Court's exercise of its certiorari jurisdiction.

II.

THE JURY'S VERDICTS AT BOTH THE GUILT-INNOCENCE AND PUNISHMENT PHASES OF TRIAL NECESSARILY INCLUDED A FINDING THAT MARTINEZ INTENDED THE MURDER OF HIS VICTIMS. THE TRIAL COURT ADEQUATELY INSTRUCTED THE JURY TO CONSIDER ONLY MARTINEZ' CONDUCT DURING ITS PUNISHMENT PHASE DELIBERATIONS.

Martinez contends that the trial court failed to instruct the jury that the law of parties does not apply to the punishment phase of trial, thus violating his Eighth Amendment rights to an individualized sentencing determination under this Court's analysis in *Enmund v. Florida*, 458 U.S. 782 (1982). He asserts that, because the jury was instructed at the guilt-innocence phase of trial that it could convict Martinez of capital murder as a party, the jury probably then proceeded to sentence him to death under the erroneous assumption it should apply the law of parties to the punishment phase as well. Martinez' claim is without merit for several reasons.

Initially, Martinez' claim regarding the punishment phase instructions is misplaced because the jury made the requisite *Enmund* finding during its deliberations at the guilt-innocence phase of trial, even before proceeding to

the punishment phase. In *Enmund*, this Court held that it violates the Eighth Amendment to sentence a person to death for his participation in a felony that results in murder if he himself did not kill, attempt to kill, or intend that a killing take place or that lethal force be employed. At guilt-innocence, the trial court charged the jury that it could convict Martinez of capital murder as a party, instructing that one is "criminally responsible as a party to an offense if the offense is committed by his own conduct, by the conduct of another for which he is criminally responsible, or both." Tr. 376. The court then charged,

> A person is criminally responsible for an offense committed by the conduct of another if, *acting with intent to promote or assist the commission of the offense*, he solicits, encourages, directs, aids, or attempts to aid the other person to commit the offense. Mere presence alone will not constitute one a party to an offense.
>
> Now, bearing in mind the foregoing instructions, if you find from the evidence beyond a reasonable doubt that . . . MIGUEL ANGEL VENEGAS [Martinez' accomplice] did intentionally or knowingly cause the death of more than one individual, in the same criminal transaction, . . . and that the defendant, **MIGUEL ANGEL MARTINEZ**, then and there *knew of the intent*, if any, of said MIGUEL ANGEL VENEGAS, to stab JAMES D. SMILEY, DANIEL DUENEZ, and RUBEN MARTINEZ,

JR. and to strike with an axe JAMES D. SMILEY and RUBEN MARTINEZ, JR., and the defendant, **MIGUEL ANGEL MARTINEZ**, *acted with intent to promote or assist the commission of the offense* by MIGUEL ANGEL VENEGAS by aiding or attempting to aid, MIGUEL ANGEL VENEGAS to commit the offense of murder, causing the deaths of JAMES D. SMILEY, DANIEL DUENEZ and RUBEN MARTINEZ, JR., you will find the defendant, **MIGUEL ANGEL MARTINEZ**, guilty of capital murder as charged in the indictment; or

If you find from the evidence beyond reasonable doubt, that . . . the defendant, **MIGUEL ANGEL MARTINEZ**, did then and there *intentionally and knowingly murder more than one person in the same criminal transaction*, to-wit: did then and there intentionally and knowingly cause the death of an individual to-wit: RUBEN MARTINEZ, by stabbing the said RUBEN MARTINEZ with a deadly weapon, to-wit: a knife, . . . and MIGUEL ANGEL VENEGAS did then and there intentionally and knowingly cause the death of JAMES SMILEY and DANIEL DUENEZ, by striking them with an axe and stabbing them with a knife, and **MIGUEL ANGEL MARTINEZ** *did then and there know of the intent* , if any, of the said MIGUEL

> ANGEL VENEGAS to strike and stab the said JAMES D. SMILEY and DANIEL DUENEZ, and the defendant **MIGUEL ANGEL MARTINEZ**, *acted with the intent to promote or assist in the commission of the offense* by aiding or attempting to aid MIGUEL ANGEL VENEGAS, to commit the offense of causing the death of JAMES D. SMILEY and DANIEL DUENEZ, then you will find the defendant, **MIGUEL ANGEL MARTINEZ**, guilty of capital murder.

Tr. 376-78 (emphasis added).

It is clear from the foregoing instructions that the jury was required to find Martinez *at the very least* intended that a killing take place or that lethal force be employed before even finding him guilty of capital murder. In fact, it was not enough that Martinez intended the murders, the jury also had to find that Martinez was "aiding or attempting to aid" his cohort in the three murders or that Martinez himself intentionally murdered at least one of the victims (Ruben Martinez) and intended and aided the other two murders. [5] Thus, in the instant case, the jury made the *Enmund* finding at the guilt-innocence phase of trial because they were not allowed even to

---

[5] Unlike cases where a defendant can argue that he did not foresee a murder being committed by his accomplice, the evidence in the instant case clearly establishes that Martinez fully participated in at least one of the murders by stabbing the first murder victim. He admits to doing so in his confession, which was admitted at trial, 11 SR 42, and this evidence was corroborated by testimony from other witnesses at trial. 11 SR 134; 12 SR 341. Although there is evidence that Martinez' cohort hit the same victim in the head with an ax, it was established at trial that stab wounds from the knife and not the ax were the actual cause of death. 11 SR 302.

convict Martinez of capital murder, much less sentence him to death, unless they found he intended at least the murder of his victims. Thus, the punishment phase issues in the instant case were not the critical determinant of whether Martinez met the *Enmund* standards for imposition of the death penalty and the trial court's instructions at punishment are irrelevant for purposes of an *Enmund* analysis in the instant case.

Secondly, even assuming the punishment phase instructions were relevant to the analysis, Martinez' assertion that the court failed to adequately instruct the jury to consider only Martinez' conduct in answering the special issues is simply incorrect. As the Court of Criminal Appeals concluded, the trial court *did* give such an instruction at punishment. *Martinez*, No. 71, 481, slip op. at 29-30. The trial court specifically instructed the jurors at punishment that "in answering the issues submitted to you, you will confine yourselves, in answering the following issues to the conduct and acts *of the defendant standing alone*." Tr. 483 (emphasis added). As the court below concluded, this instruction itself forecloses Martinez' claim because it confined the jury's punishment phase deliberations to his conduct alone and not that of another partys. *Martinez*, No. 71, 481, slip op. at 30.

Finally, even without this instruction, Martinez' Eighth Amendment rights were protected because of the nature and wording of the special issues themselves. As the Fifth Circuit has consistently held, an anti-parties instruction in the punishment phase charge is not constitutionally required, even if requested, because "the special issues submitted to the jury in Texas capital punishment cases sufficiently focus on the defendant's

personal conduct and culpability for his crime."[6] *McCoy v. Lynaugh*, 874 F.2d 954, 961 (5th Cir. 1989), *Skillern v. Estelle*, 720 F.2d 839, 847-48 (5th Cir. 1983), *cert. denied*, 469 U.S. 873 (1984); *see Santana v. Collins*, No. 92-2319, slip. op. at 5-7 (5th Cir.--November 23, 1992) (unpublished); *see also Jacobs v. Scott*, 31 F.3d 1319, 1326 (5th Cir. 1994) (jury able to give mitigating effect to petitioner's non-triggerman status under the first special issue), *cert. denied*, 115 S. Ct. 711 (1995); *Stewart v. Collins*, 978 F.2d 199, 201 (5th Cir. 1992) (same), *cert. denied*, 113 S. Ct. 1951 (1993). Accordingly, when the jury found that Martinez acted deliberately under the first special issue, the determination was clearly based solely on Martinez' own conduct and culpability and not that of his cohorts. Thus, even assuming the jury had not already found through its verdict of guilt that Martinez killed, attempted to kill, or intended to kill, the jury clearly made such a finding during the punishment phase of trial through its answer to the first special issue.[7] For the foregoing reasons, Martinez' claim must fail.

---

[6] Furthermore, defense counsel repeatedly and emphatically argued during final summations at punishment that the jury must consider Martinez' conduct *alone* in answering the special punishment issues and not that of his cohort. 12 SR 712, 713, 717, 720, 721. The prosecutor likewise limited his argument to the conduct of Martinez, never even suggesting that the jury should answer the special issues based on the conduct of Martinez' cohort. 12 SR 721-29.

[7] Indeed, by answering the first special issue affirmatively, the jury here made a finding more stringent than that required by *Enmund*; the jury found that Martinez not only acted intentionally, but "deliberately", which was defined by the trial court as having "a meaning different and distinct from the word 'intentionally' as that word was previously defined in the charged [sic] on guilt. The term 'deliberately,' as used in special issue Number 1 is defined as with careful consideration or deliberation; with full intent; not hastily or carelessly--as a deliberately formed purpose; with awareness of the consequences." Tr. 482.

CONCLUSION

For the foregoing reasons, the State respectfully requests that the petition for writ of certiorari be denied.

Respectfully submitted,

DAN MORALES
Attorney General of Texas

JORGE VEGA
First Assistant Attorney General

DREW T. DURHAM
Deputy Attorney General
For Criminal Justice

*MARGARET PORTMAN GRIFFEY
Assistant Attorney General
Chief, Capital Litigation Division

LAURA BAYOUTH POPPS
Assistant Attorney General

P. O. Box 12548, Capitol Station
Austin, Texas 78711
(512) 936-1600
Fax No. (512) 320-8132

ATTORNEYS FOR RESPONDENT

* Counsel of Record